

Report on Investigation of Need and Assessment of Resources

Committee on Equal Access to Legal Services

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Executive Summary

The Supreme Court formed the Committee on Equal Access to Legal Services to identify the civil legal needs of low-income Vermonters and study their access to the courts and legal services. The Committee collected data from several sources including a telephone survey of low-income Vermonters, a personal survey of low-income Vermonters who lacked access to telephones, a survey of court personnel, a survey of practicing lawyers and a survey of the general public. This interim report assesses the civil legal needs of low-income Vermont families, evaluates the legal resources available to meet the need and outlines possible solutions for further discussion. A final report will make specific recommendations for actions to take to address the unmet legal needs identified here.

Low-income families in Vermont face more than 60,000 legal problems every year, from eviction and divorce to consumer problems and loss of government benefits. Very low-income households face significantly more legal problems than those with only slightly higher incomes.

Severe reductions in the amount of federal financial support, plus federally mandated service restrictions, have resulted in reduced levels of service by legal services organizations in Vermont, compromising the ability of the state's poorest citizens to obtain access to the judicial system. Many low-income Vermonters lack representation to protect essential rights such as housing and basic income.

75% of Vermont's low-income families faced their legal problem without help. This is true despite the fact that Vermont's existing legal services organizations maintain an effective, efficient system of delivering the reduced resources available. Low-income Vermonters who receive legal assistance are more likely to believe that they were fairly treated than those who do not.

88% of Vermonters believe that legal help for civil legal problems should be provided to poor Vermonters who need it. 81% support legislative funding for these services. Judges and lawyers also believe that the most effective solution to the unmet legal needs of the poor is increased funding for legal services.

- Court staff are active and involved in helping low-income people to manage their legal problems. Simplified court forms and information written in plain English would also help significantly.

Many attorneys willingly provide generous amounts of *pro bono* services to low-income families. These voluntary contributions need to be encouraged, facilitated, and supported. Expanded attorney participation and improvement in coordination would increase the effectiveness of voluntary *pro bono* efforts.

Introduction

A. Committee on Equal Access to Legal Services

Concerned about reductions in federal funding for civil legal services, increases in the number of poor people who are representing themselves in court, and the need to insure equal access to justice for all Vermonters, the Vermont Supreme Court established the Committee on Equal Access to Legal Services to examine the civil legal needs of low-income Vermonters.¹ Specifically, the Supreme Court charged the Committee as follows:

The Committee shall assess the extent to which civil legal problems are not being addressed because of lack of funds to hire professional counsel or inability to effectively proceed pro se. The Committee shall prepare a report detailing its findings and making recommendations to the Court for solving any problems identified, including, but not limited to, recommendations for legislation, rule changes, increasing funding for civil legal services, and organizing the voluntary efforts of the bar to increase access to legal services.

With Court approval, the Committee shall develop a state-wide plan based on its report for the implementations of its recommendations

The members of the Committee are:

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Robert Hemley, Esq., Chair, Gravel & Shea
Eric Avildsen, Esq., Executive Director, Vermont Legal Aid, Inc.
Angele Court, Director, Vermont Volunteer Lawyers Project,
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Kinvin Wroth, Esq., Dean, Vermont Law School

The Committee received financial assistance from the Vermont Supreme Court, the Vermont Agency of Human Services, the Legal Services Corporation, and the Vermont Community Foundation. The Committee also recruited partners to support its work, including the Vermont Agency of Human Services, the Office of Economic

¹ For the purposes of the survey a low-income household was defined as one meeting the general eligibility guidelines for programs like Law Line that are funded by the federal Legal Services Corporation. To qualify, a household income must be below 187.5% of the federal poverty guideline for a household of a particular size. The maximum income allowed is dependant on the number of people in a client's household. For example, a mother and 2 children, a family of three, would have a maximum monthly income of \$2152.00 per month at the time the assessment was conducted. The guidelines which were used are attached in a table as Exhibit A.

Opportunity, the Vermont Bar Association, Vermont Law School, the Office of Court Administrator, the Vermont Bar Foundation, the Vermont Community Foundation, the Governor's Commission on Women, and the United Way of Chittenden County.

Working with input from its partners and the experience and expertise of its members, the Committee gathered information from a diverse group of sources with varied perspectives on the issues it was asked to investigate. It concluded that the unmet civil legal needs of low-income Vermont families are substantial and serious, affect basic human needs and undermine confidence in the integrity of the legal system itself. The Committee urges everyone concerned or involved with equal access to justice to take part in renewed efforts to resolve these critical problems.

A. Background: Legal Services in Vermont

Vermont Legal Aid, Inc., the oldest and largest legal services organization in Vermont, was founded in 1969 by several well known members of the Vermont bench and bar including Chief Justice James Holden and James Jeffords. When the federal Legal Services Corporation was created in 1974, Vermont Legal Aid became one of its original grantees. Federal appropriations for the Legal Services Corporation increased through the 1970s until 1981 when its budget was cut by more than one third. This reduction was passed on to Vermont Legal Aid, causing a sharp reduction in its staffing and a tightening of its priorities. Federal funding for legal services remained relatively constant for almost 10 years despite some congressional calls for its elimination. In 1995 Congress reduced funding for legal services in Vermont by nearly 40%. Along with the cuts, Congress enacted a series of regulations which prevented recipient programs from engaging in class actions, prison litigation, welfare reform litigation and legislative or administrative advocacy, among other restrictions. Because of the incompatibility of these new Legal Services Corporation restrictions with other grant requirements from the State of Vermont and other funding sources, Vermont Legal Aid decided in 1995 that it could no longer receive Legal Services Corporation funds.

In order to make sure that Vermont continued to receive all available federal funds to meet the needs of low-income families in Vermont, the Board of Trustees of Vermont Legal Aid created a new, independent organization, Legal Services Law Line of Vermont (Law Line). In 1996, this organization became the grantee of the federal Legal Services Corporation for Vermont and continues to receive those funds today. Law Line's mission is to provide legal services to as many of the low-income people of Vermont as possible, to empower clients by providing the tools they need to help themselves, and to eliminate barriers that prevent low-income people from access to justice and restrict their right to be heard. Law Line specializes in legal advice, brief service, and community education. In collaboration with Vermont Legal Aid, it has created an integrated statewide intake system which allows eligible clients to access legal services from anywhere in the state by contacting one of the five local Vermont Legal Aid offices or by calling a toll free 800 number. By integrating a telephone advice line with local full service offices, Law Line and Vermont Legal Aid work to maximize the number of people helped and target their limited resources in the most effective manner possible.

Total funding for general legal services to low-income people in Vermont from all state, federal and private sources is significantly less today than it was twenty years ago. Unrestricted funding for legal services in Vermont was just over \$1,110,000 in 1981. Adjusted for inflation this equals almost twice as much money, \$2,134,000, in today's dollars. This year, however, total funding for legal services from the Legal Services Corporation, the State of Vermont, and the Vermont Bar Foundation, the three principal funding sources for general, unrestricted legal services to the poor, is \$1,580,000. That is 74% of the money available for general unrestricted legal services twenty years ago.

This loss of resources has required adaptations in the delivery system. The initial response to reductions in staff was to tighten priorities so that Vermont Legal Aid could focus on the most pressing and important legal issues. As a result, people with legal problems that were determined "less serious" received no help at all. The creation of Law Line and the use of technology allowed legal services to reach more people, but many of those people received only advice and *pro se* assistance, not legal representation. The cumulative effect of the last twenty years of funding cuts and federal restrictions has been a significant reduction in the ability of legal services organizations to provide full scale representation. In other words, compared to twenty years ago, significantly fewer needy Vermonters receive full service legal representation in favor of more limited services such as information, advice, and *pro se* assistance.

At the same time, the number of *pro se* litigants appearing in Vermont courts has significantly increased.² A recent study looked at the level of representation in Vermont's Family Court at a point sixty days after the filing of the divorce or parentage complaint for the period from July 1, 2000 to June 30, 2001. It found that in 70% of the domestic cases involving dependent children neither litigant was represented by an attorney. A similar percentage (67.7%) was found in domestic cases without dependent children. In only about 14% of the cases were both sides represented by an attorney.³ Similarly high numbers of *pro se* litigants are reported in the other Vermont courts.

² See Meeting the Challenge of Pro Se Litigation, American Judicature Society, 1998, pp. 8-16.

³ "Representation for Domestic Cases Filed During FY 2001," Vermont Office of the Court Administrator, attached as Exhibit B.

Investigation of Current Legal Needs

A. Legal Needs Assessment Design

The Committee began its work by reviewing legal needs studies conducted over the past seven years in six other states: Maine, Massachusetts, North Carolina, Minnesota, Indiana and Iowa. Particular attention was paid to the different methodologies used in assessing the extent and types of civil legal needs in each state. In addition, the Committee carefully reviewed the national *Comprehensive Legal Needs Study* conducted by the American Bar Association in 1994. After synthesizing the various approaches to legal needs assessment, the Committee adopted a four part approach to identifying and quantifying the civil legal needs of low-income Vermonters.

The Committee decided to contract with a professional organization to conduct a telephone survey of low-income Vermonters. After reviewing the credentials of a number of organizations that had done this type of work in Vermont and in other parts of the country, and discussing similar surveys that had been done by other organizations such as the United Way of Chittenden County, the Committee chose the Market Research and Consulting Division of ORC Macro to prepare and conduct the telephone survey. Working with ORC Macro, the Committee designed a survey instrument that would identify the extent to which low-income Vermonters experience civil legal problems, learn what types of problems they face most frequently, and discover something about the experiences people have in trying to navigate the legal system. By using an experienced research and marketing firm to conduct a survey, the Committee could be assured that the results would allow valid projections of the extent and type of civil legal needs across the entire state.

The Committee recognized that many low-income households do not have telephones and therefore would not respond to a telephone survey. Since this group was likely to be of even lower income than the group with telephones, the Committee wanted to be sure to measure their legal needs. With assistance from social service agencies throughout the State, the Committee surveyed low-income clients without telephones through personal interviews at social service agencies and by calls to an 800 number staffed by intake workers at Vermont Legal Aid.

The judiciary and the private bar were also identified as major sources of information regarding the civil legal needs of indigent Vermonters. The Vermont Supreme Court mailed a survey to all judges, magistrates, court clerks, and other court personnel, asking for information about the extent and types of legal needs of low-income litigants, the effectiveness of court policies and procedures for handling *pro se* litigants, and opinions on how to improve access to justice for these litigants.

With assistance from the *Pro Bono* Committee of the Vermont Bar Association, a separate survey was mailed to each of the practicing attorneys in the State. This survey collected information on the bar's perception of the legal needs of the indigent, as well as on the extent and type of *pro bono* services being provided. This survey also asked for opinions on the best ways to improve access to the legal system.

A. The ORC Macro Study**1. Methodology**

ORC Macro determined that a survey of at least 400 low-income Vermont households was necessary to be able to generalize about the civil legal needs of all Vermont low-income households. Working with members of the Committee ORC Macro designed a 10-12 minute telephone survey containing 98 questions. After a series of screening questions designed to make a preliminary determination of the likelihood that the respondent was part of the survey group, the survey asked each respondent about legal problems they may have experienced in the previous twelve months. The topics covered included housing and utility problems, family law problems, government benefits, health care issues, consumer problems, education problems, immigration, discrimination and employment problems. The survey also collected demographic information and information regarding the respondent's awareness of sources of help with legal problems. Finally, the survey asked about household income to be sure that the respondent was within the Committee's definition of low-income.

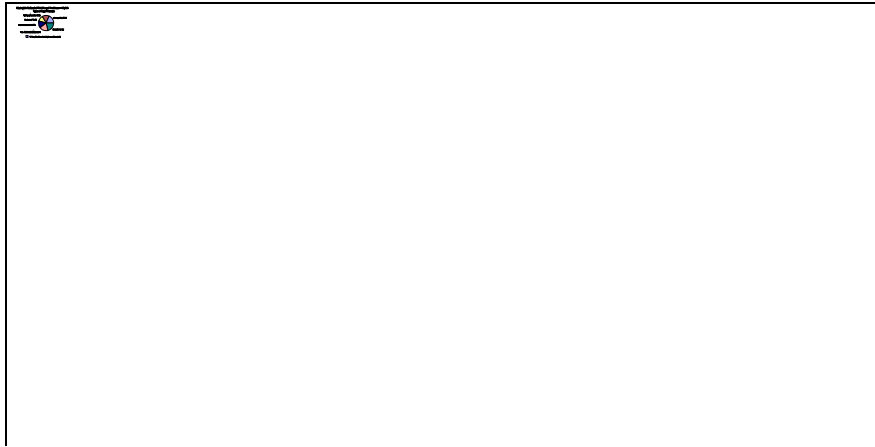
Whenever a respondent indicated that they had experienced one of the legal problems raised, they were asked what action they took to deal with the problem, whether they got any assistance in dealing with the problem and whether the problem was resolved fairly. If no action was taken to resolve the problem, the survey tried to ascertain why nothing was done. Respondents were also questioned about their overall satisfaction with the legal system.

The survey was conducted over seven weeks by contacting 2,441 households. Full interviews were completed by 672 respondents. Four hundred and thirty six (436) of these were by adult residents who qualified as members of low-income households.

1. Key Findings

The 436 low-income households that completed the telephone survey reported 487 civil legal problems within the previous 12 months. By taking the sample average and comparing it to the population statistics for the State of Vermont, ORC Macro determined that all of the low-income households in Vermont confronted 59,606 legal problems in the year prior to the survey. This represents more than one legal problem per year for every low-income household in Vermont.

The ORC Macro survey confirms that low-income households in Vermont face a wide variety of civil legal problems. More than half of those households experience more than one legal problem per year. Twenty-four percent (24%) of respondents had a consumer problem, while another 21% reported a housing or utility problem. Twenty percent (20%) of low-income households encountered government benefits and health problems while 17% of households experienced family law problems.

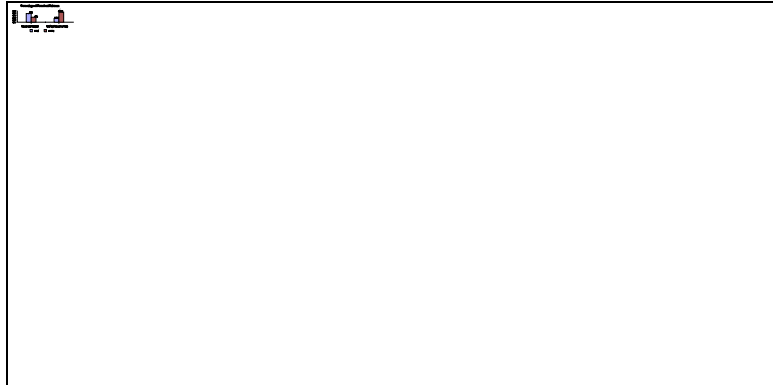


Only 9% of the respondents who reported a legal problem indicated that they got legal help from a legal services organization, the courts, or a private attorney. Another 16% received assistance from social service organizations, government agencies, friends or family members. The most common response of low-income Vermonters faced with a legal problem was to attempt to deal with it on their own. Forty-five percent (45%) of respondents reported that they took care of their problem themselves without assistance from an organization or individual. This indicates that, statewide, approximately 26,823 households tried to solve their legal problems on their own. The second most common response when confronted by a legal problem was to take no action at all. Almost 30% of respondents, equivalent to over 11,000 households statewide, took no action at all when faced with a legal problem. Thus, almost three quarters (74.9%) of the respondents who reported a legal problem said that they did not get any help dealing with that problem.



There was a significant difference in the perception of fairness between households who received help with their problem and those who did not. Thirty six percent (36%) of the households who had a legal problem said that the resolutions were fair while almost half (49.2%) said the resolutions were unfair.⁴ People who did receive help were significantly more likely to feel that the system was fair. Fifty-eight percent (58%) of the respondents who received help believed their problems were resolved fairly, while only a little more than a third (35.9%) of those who tried to solve their problems without help perceived that they had been treated fairly. Almost three-quarters (74%) of the people who did receive advice or information described the advice or information they received as helpful.

⁴ Fourteen percent (14%) of the respondents did not express an opinion regarding fairness.



In surveying low-income Vermonters, ORC Macro received and tabulated responses from an additional 236 households who did not qualify as low-income under the income guidelines but showed indicia of lower incomes based upon their responses to preliminary questions in the questionnaire.⁵

These households, who are probably only slightly above the low-income level, also showed a high incidence of legal problems, almost .8 per year. That rate, however, was significantly lower than the 1.1 rate experienced by the qualifying low-income households. While these households had many of the same types of legal problems as the lower income group, there were notable differences in the frequency of those problems. The number of housing, government assistance, family and health were all lower in this group, while the number of employment-related problems were higher.

Many more of these “higher” income households sought and received assistance with their legal problem (22% as opposed to only 11% of low-income households). In addition, only 14% of these households “did nothing” when confronted by the legal problems, compared with the 25% of low-income households who took no action. These households had similar perceptions of fairness in the legal system and of satisfaction levels with any assistance they received with their legal problems.

⁵ These questions were used to identify households which were likely to qualify as low-income for the purposes of the ORC Macro study. This group said yes when asked if they had received government provided health care such as Medicaid or Veterans assistance, charity, or had serious problems with bill collectors.

A. Survey of Non-telephone Households**1. Methodology**

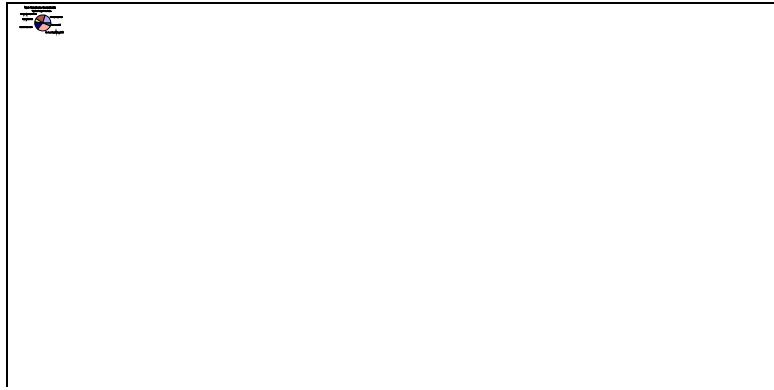
The survey of low-income households in Vermont conducted by ORC Macro looked only at low-income households with telephones. Approximately 10% of households in Vermont do not have telephones. After consultation with ORC Macro, the Committee decided that the expense and difficulty of identifying a completely random sample of these households was not justified and that an adequate picture of the legal needs of this group could be gathered through the wide distribution of surveys to organizations providing services to low-income households across the state.

In March and April 2001 more than 400 surveys were sent to 89 organizations. The organizations included all of Vermont's Community Action Programs, domestic violence shelters, Area Agencies on Aging, Senior Centers, the Vermont Center for Independent Living, and homeless shelters. The Committee also distributed surveys to a variety of other social service and advocacy organizations likely to serve low-income households without telephones. The organizations were asked to identify low-income clients without telephones and help these clients fill out a survey of their legal needs. Clients were also encouraged to complete the survey and by calling an 800 number to be surveyed by a Vermont Legal Aid intake specialist.

1. Key Findings

Thirty-nine responses to the survey of non-telephone households were received and tabulated. The results show similar legal needs to low-income households with telephones. However, the incidence of legal problems per household is significantly higher. Households without telephones who were surveyed experienced 167 legal problems in the preceding year, a rate of almost 4.3 per household. This compares with a rate of 1.1 in low-income households with telephones.

The types of legal problems experienced by households without telephones were also different from the experience of telephone households. The most frequently mentioned legal problems were difficulties with health care and government assistance programs (29.4%), followed by family (21%) and housing (21%) problems. Only 6.3% of non-telephone households had consumer problems, compared with 24% of households with telephones. It is likely that these households are significantly poorer than those with telephones, making it less likely that they have credit or purchased consumer goods. Employment problems arose in only half as many of the non-telephone households (about 7% versus 14% of the telephone households), primarily because a much smaller number of households in this group was employed during the previous year.



The survey of households without telephones describes the legal needs of a diverse group of low-income Vermonters. Respondents included individuals and families living in homeless shelters as well as people living permanently in a household without a telephone. Their ages ranged from 15 to 75 with the large majority between 29 and 45 years of age. The respondents in the non-telephone survey represented a broad cross section of Vermonters. Approximately 30% of the respondents were from Northwest Vermont (Addison, Chittenden and Franklin counties), while 13% were households in the Northeast Kingdom, 26% from Southeast Vermont, 15% from Southwest and 16% from Central Vermont. While these figures do not exactly track the distribution of the population as a whole, they are a reasonably close approximation and represent a broad enough distribution to accurately represent the overall incidence of legal problems in this group.

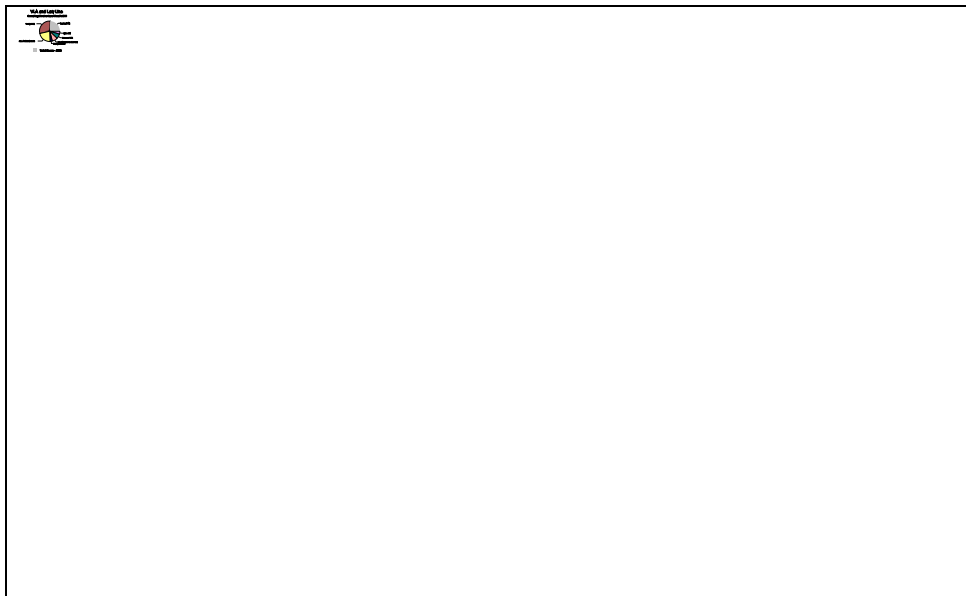
The non-telephone respondents were much more likely to receive help with their legal problem than the telephone respondents, though almost one-half (47%) of these households still were not able to get any help with their legal problems.

Current Resources

A. Direct Legal Services

Vermont Legal Aid, in conjunction with Law Line, has created an integrated intake system which can process requests for legal services from anywhere in the State. The initial point of contact is a Vermont Legal Aid intake specialist who can be reached by visiting or calling one of the five local offices located in Burlington, Montpelier, St. Johnsbury, Rutland, and Springfield or by calling a statewide 800 number for telephone intake by Vermont Legal Aid intake specialists in Burlington. The intake specialist enters information about the potential client, including family composition, financial information and a problem description into a customized case management database. Based on detailed screening guidelines, the intake specialist responds in one of several ways. He or she may refer the caller to a local resource, assign the case to a Vermont Legal Aid project, or refer the case electronically to Law Line where it will be assigned to an attorney or paralegal.

Working together, Vermont Legal Aid and Law Line served approximately 5,808 low-income clients last year⁶. Their legal problems ranged from domestic abuse and eviction to problems with government benefit programs such as food stamps and welfare, and general consumer complaints.



The type of legal problems addressed by Vermont Legal Aid and Law Line mirror those reported in the ORC Macro and non-telephone surveys but the frequency of these problems is not the same. For example, the percentage of family law cases is higher in the service cases comparison than it is in the distribution of all legal problems as revealed by the telephone survey. Consumer problems on the other hand occur much more often than is reflected in the number of cases where service is provided by Vermont Legal Aid

⁶ This total does not include legal services provided to residents of long-term care facilities, the State Hospital, and other clients served by specialized projects of Vermont Legal Aid, many of whom are low-income, see footnote 7, page , *infra*.

or Law Line. The difference in the types of problems Vermont Legal Aid and Law Line provide help on reflects several factors including priorities decisions made by the legal services organizations, the availability of funding, client's subjective evaluation of the seriousness of the problem, and the general awareness of the availability of assistance with some types of problems.

Vermont Legal Aid and Law Line have directed their efforts at serving the clients in the greatest social and economic need. Full representation by an attorney is generally directed toward the problems of very low-income families and is limited to very high risk legal problems such as serious domestic abuse where there is an attorney on the other side, threatened homelessness or loss of subsidized housing, or other problems involving a direct threat to the necessities of life.

The changes in total funding for legal services show a dramatic reduction over the last ten years in the amount of funds available for general, unrestricted legal services, from 71.9% of total funding in 1990 to 46.5% in 2000.



In order to adjust to these changes, Law Line was created and Vermont Legal Aid reorganized itself to serve its clients through six specialized projects.⁷ While Vermont Legal Aid provides significant legal services through these specialized projects, many of their funding sources are not directed toward low-income households and restrict service to particular groups of clients or particular types of legal problems. In other words many of these specialized grants are not available to support general legal services to the poor.

⁷ The Poverty Law Project handles the widest range of cases, from illegal evictions to domestic violence to legislative and administrative advocacy on behalf of low-income clients and client groups. The Senior Citizens Law Project serves Vermonters sixty years and older who are in the greatest social and economic need. The Disability Law Project assists people with legal problems arising from their disability. The Mental Health Law Project works to protect the rights of people facing commitment to the state hospital in Waterbury. The Vermont Long Term Care Ombudsman provides assistance for Vermonters who live in nursing homes and residential care homes. The Medicare Advocacy Project handles appeals for Medicaid recipients who have been denied Medicare. Vermont Legal Aid's newest project, the Office of Health Care Ombudsman, was established in 1999 and provides a wide range of advocacy to Vermonters with health insurance and health care problems.

The total advocacy staff available at Vermont Legal Aid and Law Line to assist low-income clients with general civil legal problems is less than half what it was in 1980 and only three quarters of what it was in 1990.



The other major legal services organization that provides general legal services to low-income Vermonters is the South Royalton Legal Clinic. The South Royalton Legal Clinic is the teaching civil poverty law clinic of Vermont Law School. Four experienced attorneys and two support staff, working with 40 law students, last year provided legal services to nearly 500 low-income households of six Vermont counties, principally Windsor, Orange and Washington. Funding for the Clinic's work is provided by Vermont Law School tuition, two grants provided by the United States Department of Justice for representation of victims of domestic violence, and various smaller private grants. Representation is provided in areas such as government benefits, family, juvenile and children's rights, civil rights and civil liberties, landlord tenant relations, consumer protection, immigration, and federally subsidized health care and housing. The Clinic has provided high quality representation in southeastern and east central Vermont for over 20 years, and has effectively served as a legal aid office for the part of the State situated between the Springfield, Montpelier, and Rutland offices of Vermont Legal Aid.

A. ***Pro Bono* Legal Services**

Legal services are also provided to low-income Vermonters through the voluntary *pro bono* efforts of Vermont attorneys. Volunteer efforts by private attorneys (or "*pro bono*") have long been a fundamental part of the American legal system. The Vermont Rules of Professional Conduct make it the responsibility of individual attorneys to help provide free legal services. All attorneys are expected to provide at least fifty hours of *pro bono* legal services per year, at least twenty five hours of which should be legal services provided without fee or expectation of fee to persons of limited means or organizations designed primarily to address the needs of persons of limited means.⁸

⁸ Vermont Rule of Professional Conduct 6.1 states:

A lawyer should render at least (50) hours of *pro bono* public legal services per year. In fulfilling this responsibility, the lawyer should:

- (A) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means; or

One of the primary mechanisms for providing *pro bono* services to low-income clients has been through the Vermont Volunteer Lawyers Project which coordinates the intake and placement of cases for low-income clients to members of its *pro bono* panel. In addition, free legal services are offered to low-income clients by individual attorneys and law firms. Court-based free legal advice clinics are operated in four counties by local bar associations, and some courts maintain lists of attorneys willing to take *pro bono* cases in several specialized areas.⁹ The Vermont Bar Association publishes a directory of *pro bono* opportunities researched and compiled by its Pro Bono Committee. Finally, a number of non-profit agencies who help the poor receive free legal services from private attorneys serving on their Boards or as volunteers.

In April 2001 the Committee, working with the Vermont Bar Association, mailed a three page written survey to each of the 2500 licensed attorneys in the State. The survey included eleven questions which elicited opinions on civil legal problems and *pro bono* services. The 387 attorneys who responded were a very experienced group with a strong commitment to *pro bono* service. A very large number of respondents, 91%, said they had provided *pro bono* services in the last three years. Forty-three percent (43%) of the services provided were representing low-income people, 25% of the service was assisting charitable non-profit organizations in matters designed primarily to address the needs of persons of limited means, 10% of the services were in providing *pro bono* assistance at quick advice clinics and 22% were in other types of *pro bono* services. Asked about other types of *pro bono* service, 53% had served charitable non-profit organizations on their boards and 47% had assisted charitable non-profit organizations with corporate, organizational, or transaction work.

Attorneys who had provided *pro bono* services to low-income individuals or families within the last three years were asked what kinds of legal problems they worked on. They reported working on a wide variety of legal problems: 20% said they worked on family law or juvenile justice problems; 19% said they were involved with housing or

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- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
 - (B) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

⁹ For example, many probate courts assign guardianship cases involving low-income clients on a *pro bono* basis; other courts regularly appoint private attorneys on a *pro bono* basis to represent children in complicated family law cases.

landlord/tenant problems; 14% said they worked on probate problems; 10% helped with real estate problems; 9% worked on consumer or utility problems; 7% worked on employment issues; 6% were involved with government benefits or entitlement program problems; 5% dealt with health care issues; 4% were involved with discrimination (other than employment) or other human rights problems; 4% worked on education; and 2% worked on immigration problems.

The Vermont Volunteer Lawyers Project (VVLP) is a cooperative effort of the Vermont Bar Association and Legal Services Law Line of Vermont. It is the only statewide *pro bono* project in Vermont. There are currently 200 attorneys in Vermont who accept referral cases from VVLP. This is less than 10% of all the licensed attorneys in the state. Most of these attorneys have been continuously active providers of *pro bono* services over the last ten years. The number of cases referred to *pro bono* attorneys by VVLP is one third of the number successfully referred in 1991.

A. ***Pro Se* Assistance**

In April of 2001 the Committee, working with the Vermont Supreme Court Administrator's office, distributed a written survey to judges, magistrates, clerks and other court staff to get their opinions on the availability and use of legal services for low-income people in Vermont. The survey consisted of three pages and 13 questions. One hundred and eighty-six (186) people responded.¹⁰

The survey showed that a large majority (81%) of courts had formal or informal policies describing how court staff should respond when unrepresented litigants ask where they can find legal assistance. If there was a court policy on responding to unrepresented litigants respondents were asked to describe it. In the absence of a formal policy, respondents were asked how they responded to requests for legal assistance from low-income litigants. Generally, the policy described by court staff was to refer people to Vermont Legal Aid or Law Line for assistance.

Asked where they saw the greatest need for representation, court staff identified family law cases such as custody and divorce and eviction cases as the areas where representation was most needed.

Judicial officers and clerical personnel spend significant amounts of time explaining court procedures or law to *pro se* litigants in court. More than a quarter of Vermont's judges and magistrates reported that they spent a quarter or more of their time explaining procedures or law to *pro se* litigants in the courtroom. Thirty-one percent (31%) of clerks and other clerical personnel, other than Family Court case managers, estimated that they spent a quarter or more of their time assisting these litigants.

Unmet Legal Needs

¹⁰ Of the respondents, 3% were Magistrates or Hearing Officers, 4% were Assistant Judges, 7% were Probate Judges, 12% were Trial Court Judges, 16% were Case Managers and 58% were Court Staff.

The delivery system created by Vermont Legal Aid and Law Line tries to ensure that the level of legal assistance provided to clients is effectively targeted to meet the client's particular need. However, the loss of resources for unrestricted legal services in the last decade severely hampers the ability to do this, particularly and most emphatically when the client needs representation. Vermont Legal Aid and Law Line use a variety of strategies to serve clients. Community Legal Education provides public information on legal issues relevant to low-income Vermonters. A referral to a social service agency is sufficient for some people with a legal problem. For others written information or a brochure may be enough for them resolve their problem. Some clients may need brief service from an attorney or paralegal to sort out their problem before deciding what action to take. Other problems require in depth analysis and assistance including help drafting court pleadings. All of these services can be and are provided by Law Line through their high volume telephone assistance service.

Five years of experience with the telephone help line have shown a high level of satisfaction with this service.¹¹ Seventy-five percent of former Law Line clients surveyed in 1999 felt that the information and assistance they received was helpful. Eighty-three percent (83%) said they would call Law Line again. Nevertheless, the telephone help line has also clarified the fact that large numbers of low-income Vermont households are not adequately served by this method. This group includes people with low literacy, difficulties expressing themselves orally or in writing, and Vermonters with mental or emotional disabilities. People with particularly complex living situations such as homeless people, single parent families, victims of abuse, families with disabled children, and families with difficult or inflexible work schedules, also have significant barriers that make it difficult to represent themselves. Complex legal or factual situations do not lend themselves to self representation. In other words, it is clear that many low-income clients are not able to adequately address their legal problems on their own, even with *pro se* assistance. These families require "full service" assistance from an attorney or paralegal, which may require representation in a court proceeding or administrative hearing, administrative or legislative advocacy and where appropriate, class-wide advocacy, to adequately present their case. For most of them, that level of legal assistance is not available.

There are not enough resources to provide the most effective level of assistance to many low-income clients who have the greatest need. For example, while low-income clients faced with illegal harassment from bill collectors may effectively handle their legal problem with telephone assistance from Law Line, a disabled mother facing loss of visitation is simply not able to effectively represent herself in court, particularly when the other side has an attorney. Similarly, even a tenant with defenses or counterclaims to an eviction is unlikely to be able to manage the complex legal and evidentiary issues they would be faced with, particularly when confronted with a landlord represented by an attorney.

The result of the funding cutbacks and federal restrictions has been a dramatic shift in the level of services provided to low-income Vermonters by legal services organizations, from full legal representation to telephone advice, brief service, and *pro se*

¹¹See Survey of Former Clients: 1999, Legal Services Law Line of Vermont.

assistance. Vermont Legal Aid provided almost 25% of its low-income clients with full legal representation in 1990. In FY 2000 Vermont Legal Aid and Law Line together were only able to provide full representation in 8.8% of the cases. Reconfiguration of Legal Aid and the creation of Law Line has preserved the capacity to serve low-income clients with significantly less funding. However, almost 1000 fewer low-income households received full representation last year when compared to 1990.



The number of attorneys participating in coordinated *pro bono* efforts through VVLP has declined over the last five years and VVLP's *pro bono* cases now require nearly twice as much attorney time to complete as they did ten years ago. As a result, the number of cases successfully referred to *pro bono* attorneys by VVLP is one third of the number of cases successfully referred in 1991.

Declining resources for full service general legal services and reduced participation in coordinated *pro bono* programs, combined with a national trend among litigants to represent themselves have led to an explosion of unrepresented litigants in Vermont's court system. Scarce judicial resources are inefficiently spent advising *pro se* litigants about court procedures. Unrepresented litigants are too often left with the feeling that the system is not fair and that justice has not been served.

Possible Solutions

A. Introduction

Vermont's low-income families have legal needs that our current programs are unable to meet. Legal services organizations have attempted to cope with reduced resources by targeting their efforts to the most serious needs and utilizing technology to try to provide as many clients as possible with at least some assistance. However, very serious legal needs remain unmet and we have not achieved equal access to justice. The Committee looked at three areas where it felt solutions should be explored: increasing funding for direct legal services, increasing court services to *pro se* litigants, and increasing *pro bono* services.

A. Increasing Funding for Legal Services

The last twenty years have seen a steady erosion of support available to meet the need for general legal services in Vermont. Several approaches have been adopted to compensate including advice clinics, a state wide telephone help line, *pro se* assistance, and an increased reliance on specialized grant funding. These strategies have all helped address the need. Nevertheless, these strategies have not addressed a steady decline in the ability of legal services organizations to provide full scale legal representation sufficient to meet a demonstrated need for assistance with legal problems that include basic needs for shelter, food, employment and freedom from violence and intimidation. The one strategy that most effectively focuses on this critical need is to increase funding for civil legal services.

A cross section of Vermonters, like most other Americans, agree with this strategy. In July, 2001 ORC Macro conducted a telephone poll of all Vermonters that included three questions asking the public's views on civil legal services for poor Vermonters. The responses mirrored those given to similar questions as part of a national poll conducted on behalf of the National Legal Aid & Defender Association in April 2000. Sixty-one percent (61%) observed that it is either somewhat difficult or very difficult to find civil legal help. Eighty-eight percent (88%) agreed that "legal help for civil, non-criminal legal problems should be provided to poor Vermonters who need it." Most important, eighty-one percent (81%) supported the idea that Vermont's legislature should fund civil legal aid offices. Support for state funding of civil legal aid offices was strong in all regions of the State. Support for legislative funding was also strong across all income levels, age groups, gender and level of education.

A. Improved *Pro Se* Assistance

The last ten years show a steady increase in the number of *pro se* litigants in the Vermont courts. This phenomenon parallels similar trends in the rest of the country and presents problems for some of the ways courts have operated in the past as well as challenges and opportunities.

The survey of Vermont's court personnel shows a high degree of involvement and effort among court staff who help low-income people to manage their legal problems.

Court staff acknowledge their responsibility to assist *pro se* litigants. However, the level and type of help available varies around the state. The efforts of court staff would benefit from a more consistent, focused, statewide approach to *pro se* assistance.¹²

Court personnel feel that the most effective strategy the court can employ to help low-income litigants would be to increase the use of standardized forms and instructions written in plain English. There was also support for videos that explain court processes and expectations, classes for people who undertake to represent themselves, and the allocation of more personnel resources to assist unrepresented litigants. Other mechanisms which had support were creation of resource rooms in the courthouses for unrepresented litigants to use and designation of a person in each clerk's office who is responsible for assisting unrepresented litigants.

Many court staff expressed concern about the low literacy level of *pro se* litigants and the negative effect this has on their ability to adequately represent themselves. Many court personnel observed the need to provide full scale legal representation for more people. Many others spoke of the need for more resources (i.e. staff) in the clerks' offices to respond to people's needs. Many people emphasized that *pro se* litigants are disadvantaged in court, particularly where they have problems reading or understanding and are against a party who has an attorney. Like members of the bar, a majority of court staff feel that increased funding for legal services programs and more full scale representation was the best strategy for equalizing access to the legal system.¹³

There are many ways the courts can and should provide better, more uniform, and more consistent service to unrepresented litigants. This would free up judicial resources, reduce post judgment litigation, increase the likelihood that the claims of *pro se* litigants are clearly presented, and increase overall confidence in the fairness of the judicial system.

4. Increased, Targeted *Pro Bono* Efforts

The attorneys who responded to the survey are generous with their time and willingly provide significant *pro bono* services to low-income families in Vermont. The steady decline in participation in the Vermont Volunteer Lawyers Project, however, needs to be reversed. A stronger commitment to voluntary *pro bono* needs to be developed, improved and expanded. Voluntary *pro bono* efforts need to be facilitated so that they can alleviate some of the more pressing needs of low-income families in Vermont. More attorneys need to be recruited and supported as active providers of direct legal services to Vermont's low-income families. Asked to identify mechanisms that would assist them in committing to providing *pro bono* services, Vermont attorneys suggested a wide variety of possible strategies including a better matching of *pro bono*

¹²See Palmer, Susan, "The State of *Pro Se* Litigant Education in Vermont," The Vermont Bar Journal, September 2001, Volume 27, No. 3, pp. 43-45.

¹³ Fifty seven percent (57%) of the respondents thought that the most needed strategy for improving legal services is increasing public funding for legal services. 27% thought that the most needed strategy is to provide greater assistance to *pro se* litigants. 17% thought that the most needed strategy is to increase the provision of *pro bono* services by the private bar.

needs with lawyer practice areas and expertise and increased support of training and support through free or reduced fee seminars.

Nevertheless, it is obvious that *pro bono* services cannot and should not be expected to meet all, or perhaps even a major portion, of the unmet legal needs of low-income Vermont families. Even a ten fold increase in *pro bono* cases would leave 25,000 households without help. Seventy five percent (75%) of the respondents to the private bar survey acknowledge that *pro bono* alone cannot fill the gap and that the most needed strategy for meeting the unmet need is increased public funding for legal services.

CONCLUSION

Low-income Vermonters are being denied equal access to legal services and the judicial process. They cannot afford to hire counsel and free legal services have been significantly reduced in scope as a result of twenty years of erosion in federal funding. For the most part, particularly in complex court cases, low-income people are not able to represent themselves effectively in court, despite concerted assistance and legal advice by Law Line and various advice clinics. Lack of representation goes beyond individual unmet legal needs and threatens to undermine confidence in the judicial system .

The Committee perceives that effective access to justice requires a full service lawyer in some cases. We can meet this need by increasing funding for civil legal services and prioritizing available funds to address the most serious legal problems. For those less complex problems where direct representation is not as critical, we can continue to explore the provision of focused, comprehensive assistance to *pro se* litigants, through the courts and through Law Line. It is also important that there be improved support and coordination for voluntary *pro bono* efforts by practicing attorneys.

The Committee's next task is to review the options outlined above, as well as others, and formulate an action plan for consideration by the Supreme Court.